

## **STATE PUBLIC DEFENDER [493]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 13B.4(7), the State Public Defender amends Chapter 7, “Definitions” and Chapter 12, “Claims for Indigent Defense Services” and adds new Chapter 14, “Claims for Attorney Fees in 600A Terminations,” Iowa Administrative Code.

These amendments implement 2005 Iowa Acts, House File 683, which revises procedures regarding appointment of counsel and approval in parole violation cases and cases for termination of parental rights under Iowa Code chapter 600A.

Pursuant to Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical. These amendments are required because the statutory changes noted above are effective immediately upon enactment and are applicable retroactively.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be immediate and these amendments should be effective immediately because the amendments confer a benefit on the public and are intended to implement 2005 Iowa Acts, House File 683, which became effective on May 5, 2005.

These amendments are also published herein under Notice of Intended Action as ARC \_\_\_\_\_ to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B, 600A, 815 and 908 as amended by 2005 Iowa Acts, House File 683.

The following amendments are adopted.

**Item 1.** Amend rule **493—7.1(13B,815)** as follows:

Amend the following definition:

“Timely claim” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004. For parole violation cases to which the attorney was appointed after November 10, 2004 and before May 5, 2005, a claim is timely if submitted to the state public defender for payment before June 20, 2005.

**Item 2.** Amend subrule **493—12.1(1)** as follows:

**12.1(1)** The state public defender will pay attorney fees and costs for the following types of cases out of the indigent defense fund: commitment of sexually violent predators under Iowa Code chapter 229A, contempts, postconviction relief proceedings to the extent authorized under Iowa Code chapter 822, juvenile justice under Iowa Code section 232.141(3)(c), guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under 600A, fees for appellate attorneys under Iowa Code section 814.11, fees to attorneys under Iowa Code section 815.7, fees for counsel appointed by Court under Iowa Code section 815.10, violation of probation or parole under Iowa Code ~~section-chapter~~ 908.11, indigent’s right to transcript on appeal under Iowa Code section 814.9, indigent’s application for transcript in other cases under Iowa Code section 814.10, and special witnesses for indigents under Iowa Code section 815.4,

**Item 3.** Amend subrule **12.2(1)**, subparagraph (b)(2) as follows:

(2) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these claims.

Appointment orders in parole cases, to which the attorney was appointed on or after May 5, 2005, must also contain the following findings:

- (a) The alleged parole violator requests appointment of counsel;
- (b) The alleged parole violator is indigent, as defined in Iowa Code section 815.9;
- (c) The alleged parole violator, because of lack of skill or education, would have difficulty in presenting his or her version of a disputed set of facts, particularly where presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and
- (d) The alleged parole violator has a colorable claim that the alleged violation has not been committed, or, there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

**Item 4.** Amend subrule **493—12.4(4)** as follows:

12.4(4) Probation/parole violations. The hourly rate for time spent on probation or parole violation proceedings shall be \$50.00 per hour without regard to level of the underlying charge.

**Item 5.** Amend **493—12.6** as follows:

Amend the following fee limitation

Probation/parole violation      \$250

**Item 6.** Amend **493** by adding the following new chapter:

#### **CHAPTER 14 (new)**

##### **CLAIMS FOR ATTORNEY FEES IN 600A TERMINATIONS**

**493—14.1(13B,600A,815) Scope.** This chapter sets forth specific rules for submission, review and payment of claims for attorney fees in proceedings under Iowa Code chapter

600A. The provisions of chapters 7, 11 and 12 apply to such claims unless modified in this chapter.

**493—14.2(13B,600A,815) Definitions.** The following definitions apply only to this chapter.

“Indigent” means the person has an income level at or below one hundred percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney in the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the nature and complexity of the case.

“Timely claim” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case to which the attorney was appointed. For termination of parental rights cases under chapter 600A with a date of appointment after May 11, 2004 and a date of service before May 5, 2005, a claim is timely if submitted to the state public defender for payment before June 20, 2005.

**493—14.3(13B,600A,815) Hourly rate and fee limitations.** Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment, claims for attorney fees in a 600A termination of parental rights case will be paid at the rate of \$50 per hour with a fee limitation of \$500. Claims shall not be approved for an amount in excess of this fee limitation.

**493—14.4(13B,600A,815) Limitations on other charges and expenses.** The state public defender will not approve claims for travel time, paralegal time, or out-of-pocket expenses.

**493—14.5 (13B,600A,815) Claims for attorney fees.** The state public defender shall review claims for attorney fees, submitted on Juvenile claim forms, for representing the respondent in proceedings for termination of parental rights under chapter 600A in the same manner as provided in chapter 12 with the exceptions provided in this rule.

**14.5(1)** For cases to which the attorney was appointed on or after May 5, 2005, the order of appointment must contain the following additional findings:

- a. The respondent requests appointment of counsel;
- b. Both the petitioner, or the person on whose behalf the petition is filed, and the respondent are indigent;
- c. The respondent, because of lack of skill or education, would have difficulty in presenting his or her version of a disputed set of facts, particularly where presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and
- d. The respondent has a colorable defense to the termination of parental rights, or, there are substantial reasons that make termination of parental rights inappropriate.

**14.5(2)** For cases to which the attorney was appointed on or after May 5, 2005, in addition to the other requirements provided in chapter 12, a copy of both the petitioner's and respondent's financial affidavit must accompany the claim.

**14.5(3)** The provisions for review of the state public defender's action provided in chapter 12 shall apply to claims submitted under this chapter.

**493—14.6 (13B,600A,815) Report to judicial branch.** The state public defender shall report quarterly to the state court administrator detailing all approved and paid attorney fee claims for termination of parental rights under chapter 600A.

May \_\_\_\_, 2005

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State Public Defender